

A GREAT NATIONAL PROBLEM

JUDGE BLACK'S PLEAS ON THE INTER-STATE COMMERCE QUESTION.

HARRISBURG—Property in which all the people have equal rights—the authority of the state to regulate and control them—determination that may bring ruin.

The Special Committee on Railroads Transportation of the New York Chamber of Commerce addressed a series of questions to promote and consider in various parts of the country in regard to the right of railroads to regulate prices, and respecting other topics raised in considering the subject of inter-state commerce. The following is the reply of Judge J. S. Black:

Yonk, Pa., Nov. 16, 1880.

—*Political Correspondence of the New York Chamber of Commerce.*

GENTLEMEN: You propose a movement in favor of some legal regulation which will compel the railroad companies to perform their duties to the public.

I will answer your questions as directly as possible, but without observing the order in which you put them.

You desire above all things to be just. The legal rights of the railroad companies, like the rights of property, are sacred, and no violation of them comes within the scope of your designs.

But on this question railroad men misunderstand their situation. They believe, or pretend to believe, that railroads are the property of the companies authorized to run them, which is a cardinal error, and the parent of much false argument.

A public highway cannot be private property, and a railroad laid out and built by the authority of the State for the purpose of commerce is as much a public highway as a turnpike road, canal, or navigable river.

It is the duty of the State to promote intercourse and trade, by making highways of the best sort through her territory. To this end she may take land and materials, which is an exercise of the power of eminent domain. She can build a railway at her own expense, using the direct agency of her own officers, and after it is built she can make it free to all comers, or reimburse the cost by a special tax on individuals who have occasion to use it. She can designate the taking and taxing of the road, and the number of tolls to be charged at the point where a railroad crosses it, to whom grants a railroad charter. But in either or any case the road belongs to the State, and all the people have a right to use it, and may do so, without payment of tolls or maintenance of the property.

The corporations who have got into the habit of calling themselves the owners of the railroads have no property rights, but those of the franchise to use a road for a particular purpose, and to exercise them. They are the agents of the State for the performance of a public duty. If the franchise is given up, the corporation loses possession of the road and runs it herself, or employs a new agent. The company cannot keep the road any longer than an outgoing Col. 1
Custom House where he did his official work.

The State, having held a public highway at a particular place, makes a contract with a corporation to let it have a franchise, and by and by, by way of reimbursing the builders and operators, she authorizes a tax upon those who travel or carry merchandise over it.

But that tax must be reasonable, just, uniform, and not exceed what is necessary to pay for the maintenance and improvement of the property.

These principles were stated by Judge Baldwin in his opinions against the Camden and Amboy Railroad Company (*Bald. Rep.*, 222; *Id.*, 223), and by the Supreme Court of Pennsylvania, in Casey's act, the Erie and Northeast Railroad Company (*Erie's Rep.*, 287).

I do not think that the franchise is a power, but it is a right, which the company may exercise, when it pleases. Then the road is not a public highway, but public franchises are not right in it at all, and the character when authorities are making of land to build on may know beforehand exactly how much they must pay, and so that when he pays or tends the proper amount he will acquire an interest in the road.

The amount of the tax, toll, or freight in any case is not a subject of bargain between the shipper and the corporation, but a thing to be fixed, and the corporation is to charge it.

If the company may charge what it pleases, then the road is not a public highway, but public franchises are not right in it at all, and the character when authorities are making of land to build on may know beforehand exactly how much they must pay, and so that when he pays or tends the proper amount he will acquire an interest in the road.

The franchises belong to the people, then the rights of all citizens are necessarily equal, and the franchise is a right which the people have reference to the public right of property, they are so shamefully impudent in their general effect, and in their particular consequences, as well as in their actual operation.

These railroads and transportation companies connect themselves with everything. The promotion of commerce, internal and foreign, is their chief object, and their rights of producing and conserving the means of wealth and the prosperity of the rich, all are allowed for some system of management which will compete with the rates they charge to the public.

They are reasonable, uniform, and equal, without extortion, without discrimination.

The laws necessary for this purpose are not difficult to find. If you will look at the Constitution of Pennsylvania as amended in 1873, you will find in the sixteenth section a series of provisions which, if carried out and enforced, would be perfectly sufficient. But the railroads are their own masters, and it is the duty of the Legislature with the idea that they are above the Constitution.

Chairman McCarthy had a discussion with Mr. Campbell in regard to the railroads.

Mr. Campbell said that he had in mind the condition of the roads, which he thought should be improved now that we have them, though he did not say that they were constructed before the city was ready for them.

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